IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION STAMP NO. 27734 OF 2005
IN
APPEAL FROM ORDER STAMP NO. 15325 OF 2005

Mr. Prataprai N. Kothari .. Petitioner

Vs.

1. Municipal Corporation of
Gr. Mumbai and Ors. .. Respondents

Mr. M.M. Chopra i/by M/s. M.M. Chopra & Associates for Petitioner.
Mr. R.A. Malandkar for Respondent Nos.1 & 2.
Mr. M.C. Shah with Mr. J.B. Singh for Respondent No.3.

CORAM: B.H. MARLAPALLE, J.
Date : December 16, 2005.

P.C.:

1. A.O. under Stamp No.15325 of 2005 was filed belatedly challenging the order dated 14/7/2004 passed by the learned Judge of the City Civil Court at Bombay, making Notice of Motion No.1113 of 2005 absolute in terms of the ad-interim order dated 17/3/2004. However, the said A.O. was filed belatedly and, therefore, Civil Application No.894 of 2005 was filed for condonation of delay. The said Civil Application was rejected by my order dated 17/10/2005.

2. While rejecting the application, it was noted that the distance between the trunk of the Pipal tree and the construction that was put up recently by the respondent no.2 (the present applicant) was more

than 10 ft. and, therefore, I had expressed doubt whether it was required to be shifted.

3. By this petition, it is sought to be contended that the observation regarding the distance of 10 ft. or more is factually incorrect and the Pipal tree is required to be shifted. It is for the Municipal Corporation of Greater Mumbai as a Planning Authority to remeasure the distance through one of its competent officers and approach this court for corrections, if any. The contentions of the present petitioner, who was impleaded as respondent no.2 in Civil Application No.894 of 2005 cannot be the basis for reviewing the order dated 17/10/2005.

4. Hence the petition is hereby rejected summarily and it is made clear that this order will not come in the way of the Municipal Corporation of Greater Mumbai to approach this court for corrections/review, if so required, or to lead evidence before the trial court to prove that the distance is less than 10 ft.

(B.H. Marlapalle,J.)